IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
December 18, 2007 Session

# STATE OF TENNESSEE v. CHARLES E. SHIFFLETT, SR.

**Direct Appeal from the Circuit Court for Sullivan County**
**No. S50, 024 R. Jerry Beck, Judge**

---

**No. E2006-02162-CCA-R3-CD - Filed April 23, 2008**

---

The defendant, Charles E. Shifflett, Sr.[1] was indicted on charges of first degree murder, first degree murder in the perpetration of a robbery, and robbery. The defendant was convicted of the charged offenses, and the defendant's two first degree murder charges were merged into one sentence. The trial court imposed a life sentence for the merged first degree murder conviction. The defendant was sentenced to three years for the robbery conviction and his sentence was ordered to run concurrently with his life sentence. On appeal, the defendant argues that (1) the trial court erred by not dismissing his case on the grounds that the prosecution was barred by the Double Jeopardy Clause of the United States and Tennessee Constitutions; (2) the trial court erred by denying his motion to suppress the defendant's statements to police officers, (3) the trial court erred by denying the defendant's request for a special jury instruction, and (4) there was insufficient evidence to support the defendant's conviction for first degree murder. Following our review of the parties' briefs, the record, and the applicable law, we affirm the judgments of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed**

J.C. McLIN, J., delivered the opinion of the court, in which THOMAS T. WOODALL and JOHN EVERETT WILLIAMS, JJ., joined.

Stephen M. Wallace, Blountville, Tennessee, for the appellant, Charles E. Shifflett, Sr.

Robert E. Cooper, Jr., Attorney General and Reporter; John H. Bledsoe, Assistant Attorney General; H. Greeley Wells, District Attorney General, for the appellee, State of Tennessee.

## OPINION

---

[1] At trial, the defendant informed the court that his name was not Charles Shifflett, Sr., or Charles Shifflett, Jr., but simply Charles Shifflett. However, because he is identified as Charles E. Shifflett, Sr., in the indictment, we will refer to him as such in order to avoid any further confusion.

## I. BACKGROUND

Tracy Sincavage testified that she had lived in Meshoppen, Pennsylvania for over twenty years, and had been the girlfriend of the deceased victim, Charles Richardson, for eighteen years. She recounted that the victim ran a business from his home called Professional Calibration which verified the accuracy of concrete testing machines. In addition to his concrete calibration business, the victim was an antiques collector and ran a second business buying and selling antiques. The victim specialized in collecting and selling railroad antiques. She recalled that at one point, the victim obtained a large antique railroad collection from someone in New York with an approximate value of $225,000.

Ms. Sincavage testified that she met the defendant through the victim and had known him since the mid-1990s. She recalled that the defendant had come to the victim's home at least once prior to the trip leading to the victim's death. At the time of his visit, the defendant purchased a number of railroad antiques from the victim. The defendant and the victim were both planning a trip to Georgia to look at an antique collection. The defendant told Ms. Sincavage that his wife would not be going with him and the victim to Georgia.

Ms. Sincavage testified that shortly after the two men discussed their trip, the victim made arrangements to finance the possible purchase of the antique railroad collection. The victim refinanced his house for approximately $100,000 and made cash withdrawals from his checking account. The victim also made room in the upstairs area of his barn to store the antique collection. Ms. Sincavage recalled that she helped the victim prepare for the trip by packing his clothes, and by packing his money into two one-gallon Ziplock bags. Ms. Sincavage noticed that the money was wrapped and banded into denominations of $50 and $100 bills. However, Ms. Sincavage stated that she did not count the money.

Ms. Sincavage testified that she last saw the victim on the morning of Monday, April 21st. According to Ms. Sincavage, Donald Raney, an employee of the victim, picked him up that morning and drove him to Lebanon, Pennsylvania where he was to meet the defendant. Ms. Sincavage spoke with the victim by phone once that morning, and later that evening. Her phone call with the victim around 9:30 p.m. was the last time she spoke to him. She attempted to call the victim Tuesday on his cell phone but only got his voice mail. She also tried to call the defendant but got no response. She called the defendant's wife at her home in Lebanon, Pennsylvania on Tuesday night, and asked her to have the victim call her. Ms. Sincavage tried to contact the defendant again on Wednesday, April 23rd, and continued to get no response. She called the defendant's wife again on Wednesday and told her that if she did not hear from the victim, she would call police and report the victim missing. She stated that it was highly irregular for the victim to go out of town and not stay in contact with her regarding his business.

Ms. Sincavage testified that on Wednesday, April 23rd, she got a call from the defendant. The defendant informed her that the victim had gotten drunk and started a fight with a truck driver. He also stated that the victim had been picked up in Georgia by someone named Dale and that the

two men went to look at the antique railroad collection. Ms. Sincavage then asked the defendant, "What interstate are you standing on? Where were you?" She demanded the defendant's phone number and asked, "Chuck, is my Chuck there or anywhere around you?" The defendant told her he was not. Ms. Sincavage ended the call by telling the defendant, "This is it. I've had it. I'm calling the police."

Ms. Sincavage testified that she called police in Douglasville, Georgia to file a missing persons report. She was informed that if she wanted to put out a nationwide all points bulletin she would have to contact her own state police and file a missing persons report. She recalled that she contacted the Pennsylvania Police and filed a missing persons report Wednesday evening or Thursday morning. Later, she was contacted by Pennsylvania State Police on Saturday afternoon. They came to her house and informed her that the victim's body had been found.

Judith Krafjack testified that she was branch manager of Peoples National Bank in Meshoppen, Pennsylvania and that in March of 2003, the victim came to the bank to secure a loan. She stated that the victim secured a loan for $84,888 by posting Grange National Bank stock he possessed as collateral for the loan.

Deborah Dissinger testified that she was the Executive Vice President and Chief Operations Officer for Peoples National Bank. She recalled that there was a sharp increase in activity on the victim's checking account between March 17 and April 17, 2003. She testified that there was at least one deposit close to the loan amount of $84,848. Ms. Dissinger stated that more than five deposits and more than twenty-seven withdrawals were made during this period. She stated that all of the checks on record were less than $10,000. She testified that approximately $167,000 had been withdrawn from the victim's bank account between March 17th and April 17th.

Donald Raney testified that he had known the victim for over twenty years and had worked for him for approximately thirteen or fourteen years. He stated that he worked as a service technician for the victim's primary business, Professional Calibration, Inc. As a part of his job, he traveled all over the eastern seaboard states servicing concrete machines. He stated that he came to work at 7:00 a.m. on Monday, April 21, 2003. He went over his schedule for the week with the victim. The victim asked to be dropped off in Lebanon, Pennsylvania as Mr. Raney began his work route. Mr. Raney stated that the victim brought a tan-trimmed canvas duffel bag, a catalog case, a map, a briefcase, and a manilla envelope. Mr. Raney stated that he took the victim to the defendant's son's house. Mr. Raney also stated that he was introduced to the defendant once they arrived. Mr. Raney loaded the victim's belongings into the defendant's motor home and departed shortly thereafter. According to Mr. Raney, that was the last time that he saw the victim alive.

Corporal Anthony Morelli testified that he was an investigator with the Pennsylvania State Police in Tunkhannock, Pennsylvania in April of 2003. On Thursday, April 24, 2003, he received a call from the defendant. The defendant told Corporal Morelli that he was currently stopped in Mount Sidney, Virginia at a rest stop and that his motor home was on fire. The defendant spoke to Corporal Morelli about the missing persons report filed on the victim. The defendant detailed the

activities of the week, from Monday through Thursday. The defendant indicated that he and the victim left for Douglasville, Georgia at around noon, stopped at a rest stop area just across the Tennessee state line, and spent the night in his motor home. The defendant told Corporal Morelli that the victim had been drinking out in front of the motor home. The defendant stated that when he woke early the next morning, he went into the front part of the motor home where the victim was sleeping. The defendant discovered that the victim had vomited all over the couch. The defendant stated that he had nothing to clean the couch with, so the two men drove on to Douglasville.

Corporal Morelli testified that the defendant told him that he and the victim arrived at a campsite in Douglasville, Georgia where the victim contacted an individual named Dale. Approximately half-an-hour later, Dale arrived in a green truck and picked up the victim to go look at the antique railroad collection. At one point, the victim returned briefly, but left soon after and did not return. The defendant told Corporal Morelli that he waited at the campsite until approximately 2 a.m. on Thursday, April 24th. The defendant stated he was scared by the arrival of some bikers at the campsite and wanted to leave. He also informed Corporal Morelli that just after dark, he contacted his wife and Ms. Sincavage and let them know that he had not seen the defendant and that he was getting scared because some bikers were coming in and out of the camp. At around 2 a.m., he left the campground and headed back to Pennsylvania. On the way back to Pennsylvania, he stopped at the rest stop in Mount Sidney, Virginia where his motor home caught fire and burned. Corporal Morelli testified that during the telephone conversation with the defendant on Thursday, the defendant did not say anything about whether the victim had been in a fight at the rest stop in Tennessee on Monday, or about the victim being injured in any way during their stay at the rest stop.

Corporal Morelli testified that the defendant met with him voluntarily at the Tunkhannock State Police Barracks on Friday the day after their telephone conversation for a follow-up interview. During this interview, the defendant expanded upon his original story. The defendant stated that when he and the victim stopped at the rest stop in Tennessee, he went to bed between 10 and 11 p.m. While lying down, he heard the motor home door slam. He went to the front of the motor home and observed the victim with an injury to his nose and mouth. According to the defendant, the victim told him he had been beaten up by a truck driver. The defendant went back to sleep. The next morning, after the victim woke, the two men continued driving to Douglasville, Georgia. In this version, the defendant stopped on the beltway around Atlanta and the victim contacted Dale. Dale met the victim and the defendant upon their arrival at the Douglasville campsite. When Corporal Morelli asked the defendant where the victim might be, the defendant stated that the victim left with Dale to get a truck to bring back the antique railroad collection. At the conclusion of the interview, the defendant completed a written statement and signed and initialed each page of the statement.

Corporal Morelli testified that during the face to face interview, the defendant never mentioned the name Sandy Chambers or the EconoLodge Motel. At the conclusion of the interview, the defendant signed a waiver form consenting to a search of his motor home. On cross-examination, Corporal Morelli testified that he was not the principal investigator on the case. His portion of the investigation was limited to the disappearance of the victim. Once the victim's body

was found, his investigation concluded. Trooper Brian Krause and Sergeant Garrett Rain of the Pennsylvania State Police were responsible for investigating the victim's death.

Marvin Zaccaria testified that he was a route sales manager for the Dr. Pepper company. He also ran a side business as a fishing guide. At the time of the incident, he worked for the Potomac Guide Service as a guide on the Susquehanna River in Pennsylvania. During the week of April 20, 2003 through April 25, 2003, he was working as a guide on the river. On Wednesday, April 23rd, he was down river from the Clark's Ferry Bridge when he spotted what appeared to be a blanket trapped in a fishing hole. On Thursday, April 24th, he stated that the river level dropped and he saw the blanket again, along with what appeared to be a piece of plastic. On Friday, April 25th, the river level dropped again, and he saw what appeared to be an arm sticking out of a pile of trash. Upon further investigation, he discovered it was in fact a body and called 911. He remained with the body until police officers arrived.

Dr. Wayne Ross testified that he worked for the Dauphin County Coroner's Office as the forensic pathologist. He stated that he had worked as a forensic pathologist for over twenty years and had been qualified as an expert in forensic pathology in hundreds of legal cases. He recalled that when he first viewed the victim's body, it was wrapped in a comforter or quilt and trash bags. The body was wrapped tightly with duct tape and had been placed inside a blue plastic trash bin with wheels. The trash bin was secured with a rubber strap, and the quilt had been securely duct taped in horizontal and vertical rows around the body.

Dr. Ross testified that after removing the outer items from the body he saw that the victim's body was clothed only in a white t-shirt and briefs. Soil and water were found on the body. According to Dr. Ross, the autopsy of the victim showed eleven large lacerations to the head. In addition, the victim's nose was fractured with blood around his nose and mouth. His eyes were bruised and his cheekbones were fractured. There did not appear to be any defensive wounds. There was no evidence of internal trauma other than to the victim's head.

Dr. Ross testified that he performed an examination of the internal injuries to the victim's head. He stated that the severity of the trauma to the head not only created holes in the skull, but also broke the skull into little pieces. Fragments of bone had been driven into the brain itself on both sides. Dr. Ross hypothesized that an "overwhelming severe amount of force" was used to penetrate the skull and drive it directly into the brain. In addition, Dr. Ross stated that the amount of force used to kill the victim was too great to be caused by hand. A blunt object with significant weight would be required to cause the injuries. According to Dr. Ross, the injuries the victim sustained would have led to his death within minutes. Dr. Ross also noted that a blood-alcohol test was performed on the body. He stated that the victim had a blood-alcohol level of .02%. Dr. Ross stated that the blood-alcohol level for a person of the victim's height and weight equaled only "a drink or two."

Sandra Chambers testified that she had known the defendant for eleven or twelve years. She admitted that she had an affair with the defendant in the past. She stated that the first affair lasted

about a year and then lapsed for almost ten years. Ms. Chambers testified that in November of 2002, the defendant re-initiated his affair with her. The two of them traveled in his motor home to antique shows and stayed together at camp grounds. She stated that the defendant contacted her about getting together in April of 2003, and the two of them set aside some dates. Ms. Chambers' calendar was admitted into evidence and it showed that she had marked April 22, 23, and 24, 2003 with the words "keep open."

Ms. Chambers testified that she received a call from the defendant on April 23, 2003. The defendant told her he was at the EconoLodge in Grantville, Pennsylvania. She traveled to meet the defendant at the EconoLodge. She stated that the defendant's blue van was parked there. The defendant told her his motor home was with the victim. She stated that after the two of them ordered a pizza, she took a bath while the defendant went and made a phone call. When the defendant returned to the room, he was upset and told Ms. Chambers that he had to go and get his motor home back. The defendant also told Ms. Chambers that he had paid for the room for two nights and gave her the key. Ms. Chambers stated that it was around 11:30 p.m. when the defendant left. She left that evening and returned home. She stated that she came back Friday morning to return the room key and sign the registration slip. The registration slip with Ms. Chambers' signature was admitted into evidence. Ms. Chambers also stated that after the defendant's arrest, she continued to correspond with the defendant and send him money. On cross-examination, Ms. Chambers testified that she had been told that she would have to keep the date in April open because the defendant was not exactly sure on what dates the trip would take place. She also stated that the defendant did not give her any cash during their meeting at the EconoLodge.

Janet Appleby testified that she worked as a general manager at the EconoLodge in Grantville, Pennsylvania for thirteen years. She stated that records of those staying at the motel were kept in the course of business, including registration cards and records of those signing in or out. She stated that an individual's name, address, car information, rate, and number of people in the group were all listed on the registration card. In addition, the check-in and check-out times were also recorded. She testified that a registration card with her handwriting showed that the defendant paid cash for a two night stay. The defendant's vehicle was listed as "blue," "Pennslyvania," and "Plymouth van." She also testified that a person by the name "Sandy Chambers" had signed out, and received the five dollar room key deposit.

Trooper Brian Krause of the Pennsylvania Police testified that he, along with fellow officer Sergeant Garrett Rain, went to the defendant's house on Saturday, April 26, 2003, to question him further regarding the disappearance of the victim. The defendant agreed to accompany him back to the police barracks for an interview. Whereupon, the defendant was informed that he was not in custody and not under arrest. The defendant signed a non-custodial waiver form acknowledging that he was not under arrest and was free to leave at any time. The interview was taped and entered into evidence, along with a transcript of the taped recordings.

According to the tape transcripts, it appears that the defendant provided the officers with a version of events similar to what he told Corporal Morelli. The defendant provided officers with a

description of his relationship with the victim, and with general information about his antique collection. During the early stages of the interview, neither Trooper Krause nor Sergeant Rain disclosed to the defendant that they were aware that the victim's body had been found. As the interview progressed, the defendant denied killing the defendant, but he acknowledged that the victim died in the defendant's motor home at a rest stop in Bristol, Tennessee after getting into an altercation with a truck driver. The defendant also admitted that he dumped the victim's body in the Susquehanna River in Pennsylvania. He further admitted that he set fire to his motor home at a rest stop in Mount Sydney, Virginia because he was "afraid he would get blamed."

During the interview, the defendant made no mention of Sandy Chambers, or of his stay at the EconoLodge. In the latter half of the interview, Trooper Krause and Sergeant Rain showed the defendant photographs of the victim's body. At this time, the defendant said that he did not kill the victim. Trooper Krause and Sergeant Rain excused themselves from the interview and consulted an attorney as to whether they possessed sufficient evidence to place the defendant in custody. After determining that they had such evidence, the officers returned to the interview room and issued *Miranda* warnings to the defendant. When asked if he would like to consult an attorney, the defendant stated that he did and the officers terminated the interview.

On cross-examination, Trooper Krause acknowledged that he conducted searches of the defendant's telephone records, his home, his vehicles, bank records, and Sandra Chambers' home without finding any of the money allegedly stolen from the victim. Trooper Krause also acknowledged that the Welcome Center in Bristol, Tennessee was also searched without locating any evidence that a crime had occurred there. Trooper Krause admitted that the blunt instrument used to cause the victim's death had also not been located. Trooper Krause also stated that he was unaware of the discovery of any new evidence which would indicate that the homicide had occurred in Tennessee.

Lee Meyer testified that he was a district manager with Verizon Wireless. He testified as the custodian of records regarding the use of the victim's cell phone on April 21, 2003. He stated that at 9:32 p.m., 9:33 p.m., and 9:37 p.m., calls for the victim's cell phone number were routed through the Knoxville, Tennessee switch. He also stated that the following day, Tuesday April 22, 2003, there were a total of sixteen calls, all routed to the victim's voice mail. On Wednesday April 23, 2003, there were forty-one calls routed to voice mail, and on Thursday, April 24, 2003, nine calls were routed to voice mail. He testified that the last call made from the victim's cell phone was on April 21, 2003 at 9:33 p.m. off of the Knoxville, Tennessee switch. Mr. Meyer acknowledged that it was possible for someone in southern Virginia to have a call that was routed through the Knoxville switch.

Bryan Maiher testified that he lived in Carroll, Ohio and has collected antiques and railroad items for more than twenty-five or thirty years. He stated that he regularly attended the big antique railroad shows in Gaithersburg, Maryland; Brimfield, Massachusetts; and Chicago, Illinois. He also stated that he had known the victim for about ten years, and that they had periodically conducted business with one another during that time. Mr. Maiher testified that he had known the defendant

for about six years prior to the victim's death. He stated that the defendant sold a lot of antiques over the internet and did not sell that many antiques at antique shows.

Mr. Maiher testified that at an antique show in Brimfield, Massachusetts, in July 2002, several months prior to the victim's death, he overheard the defendant telling the victim about a large antique railroad collection somewhere in the South. Mr. Maiher stated that he had not heard of the existence of such a collection. He also stated that during the Brimfield antique show, he overheard the defendant talking with the victim about the collection, and informed him that he needed someone to go in with him to purchase the collection because it was a large collection with many different items.

Gerald Adams testified that he collected and sold antiques and had done so for about twelve years. He stated that he had known the defendant for approximately eight or nine years and considered him a "best friend." Mr. Adams also stated that he knew the victim for about four or five years prior to his death. Mr. Adams testified that the defendant told him about a large lantern collection held by a potential seller in the South in July 2001 at the Brimfield, Massachusetts antique show. The defendant referenced the collection again when Mr. Adams saw him at the Brimfield show in September of 2001. The defendant indicated that the seller was not yet ready to sell his collection. The two discussed the existence of the large lantern collection on a couple of other occasions. The defendant at one point told Mr. Adams that the approximate value of the collection was around $200,000. Mr. Adams testified that other than the defendant, he had not heard anyone else in the antique community say anything about a large antique lantern collection from the South. Mr. Adams also testified that approximately five years prior to the victim's death, he had a conversation with the defendant about the victim's monetary worth. On more than one occasion, the defendant identified the victim to Mr. Adams as a millionaire.

Roderick Hochrein testified that he lived in Greenfield, Massachusetts, and he had collected railroad memorabilia for seven or eight years. He stated that he knew the victim for about five years prior to his death. He bought things from the victim and sold things to him as well. Mr. Hochrein would also sell things for the victim on a regular basis over the internet to interested buyers. Mr. Hochrein stated that he had visited the victim at his house on several occasions, and had seen the collections he kept in his barn and in his house. He stated that he had last seen the victim about two weeks prior to his death when he went to the victim's home to pay him for some antiques he had sold for him. Mr. Hochrein also stated that two years prior to his death, the victim had purchased a large railroad collection from an individual in Rochester, New York valued at approximately $225,000. Mr. Hochrein stated that the victim was more knowledgeable than the defendant about antiques.

Mr. Hochrein testified that he had also known the defendant for about five years. However, he indicated that he did not know the defendant as well as he knew the victim. He stated that he had sold some things to the defendant and bought some items from him as well. Mr. Hochrein testified that he had not heard anything about a large collection of railroad antiques from Georgia.

Matthew Linn testified at trial that he worked at the Bristol Tennessee Welcome Center between 2001 and 2004. He stated that in April of 2003, he worked cleaning the center. He stated that he did not see anything unusual on the night of April 21, 2003. He also stated that behind the welcome center was an area for long-haul truck parking. He testified that it was the practice of those truck drivers to leave their engines idling all night long, which admittedly created a lot of noise.

Jim Bybee testified that he worked as the general manager at the Bristol Tennessee Welcome Center for the past nine years. He stated that the long-haul truck parking area was quite loud because truckers routinely left their engines idling. He stated that although there is a posted sign that prohibits overnight stays, motorists would frequently stay overnight. He stated that it was the responsibility of local police to enforce the prohibition. Mr. Bybee testified that he did not work on April 21st or 22nd, but he did work on Wednesday, April 23rd. He stated that he did not see anything unusual, or notice any evidence that a crime had occurred.

Sergeant Johnny Hale testified that he worked for the Bristol Police Department for almost fifteen years and was assigned to the drug unit in his office. He stated that in April of 2003, he was requested to go to the Bristol, Tennessee Welcome Center to conduct a search for evidence relating to the death of the victim. Sergeant Hale stated that he conducted an undefined grid search of the Welcome Center with the assistance of other officers. He spent several hours conducting the search and was unable to find any evidence of a homicide. He also testified that his department did not receive any calls about a trucker beating up another man in the parking lot.

The defendant was convicted of first degree murder, first degree murder in the perpetration of a robbery, and robbery. At sentencing, the defendant's two first degree murder convictions were merged, and as a result, the defendant received a life sentence. The defendant was also convicted of robbery, a Class C felony, and received a three year sentence as a standard, Range I offender. The trial court ordered that the defendant's robbery conviction run concurrent with his life sentence.

## II. ANALYSIS

### A. Double Jeopardy, Dual Sovereignty of the States and Territorial Jurisdiction

As his first issue on appeal, the defendant argues that the trial court denied him his right to be free from successive criminal prosecutions for the same conduct, in violation of the double jeopardy clause of the Fifth and Fourteenth Amendments to the United States Constitution and article I, section 10 of the Tennessee Constitution. In addition, without citation to relevant legal authority, the defendant attempts to incorporate into his double jeopardy argument, a challenge to Tennessee's territorial jurisdiction to prosecute.

We begin our review by noting the relevant procedural history of the defendant's prosecution. It appears from the available record that the defendant was charged with criminal homicide, tampering with physical evidence, and abuse of a corpse in Pennslyvania. The defendant was then prosecuted for these crime in Pennsylvania. Before reaching a verdict on the charge of criminal homicide, however, the jury was presented with a special verdict form which asked them to

determine whether or not Pennsylvania possessed territorial jurisdiction to prosecute the defendant for criminal homicide. The jury found that Pennsylvania did not possess the territorial jurisdiction to prosecute the defendant for criminal homicide. The jury determined that Pennsylvania did have territorial jurisdiction to prosecute and convict the defendant on the charges of abuse of a corpse and tampering with physical evidence. The Pennsylvania jury rendered guilty verdicts on those charges. Subsequently, the defendant was indicted in Sullivan County, Tennessee for first degree murder, first degree murder in the perpetration of a robbery, and robbery. At trial, the jury was instructed by the court that the state had to prove beyond a reasonable doubt that Tennessee had territorial jurisdiction to prosecute, i.e., that the offenses charged occurred in the Tennessee. Thereafter, the jury returned a verdict of guilt on each of the defendant's charges.

It is well-settled that both the United States and Tennessee constitutions prohibit the respective governments from subjecting citizens to being prosecuted twice for the same offense. U.S. Const. Amends. V, XIV; Tenn. Const. art. I, § 9; *Benton v. Maryland*, 395 U.S. 784, 794 (1969) (making the Fifth Amendment applicable to the states through the Fourteenth Amendment). However, the doctrine of dual sovereignty prevents the doctrine of double jeopardy from being implicated. *Heath v. Alabama*, 474 U.S. 82 (1985). The dual sovereignty doctrine provides that although a defendant may not be prosecuted twice by the same sovereign for the same acts, a subsequent prosecution by a separate sovereign does not violate the constitutional principles of double jeopardy. *See id. at* 88-92.

In *Heath v. Alabama*, the United States Supreme Court stated that the crucial question in determining the applicability of the dual sovereignty doctrine is whether the entity that seeks to prosecute a defendant for the same course of conduct, for which another entity previously has subjected the defendant to jeopardy, draws its authority to punish the offender from a separate and distinct source of power. *Heath*, 474 U.S. at 88. The Court then articulated the applicability of the dual sovereignty doctrine with respect to successive prosecutions under the laws of different states. Id. at 88-89. The Court explained:

> The power of the states to undertake criminal prosecutions derive from separate and independent sources of power and authority.
>
> . . . .
>
> This Court has plainly and repeatedly stated that two identical offenses are not the "same offence" within the meaning of the Double Jeopardy Clause if they are prosecuted by different sovereigns. If the States are separate sovereigns, as they must be under the definition of sovereignty which the Court consistently has employed, the circumstances of the case are irrelevant.

*Id*. at 88-92 (citations omitted). The Supreme Court held that "[t]he dual sovereignty doctrine, as originally articulated and consistently applied by this Court, compels the conclusion that successive prosecutions by two States for the same conduct are not barred by the Double Jeopardy Clause."

*Heath*, 474 U.S. at 88. To hold otherwise, the Court announced, "would be a shocking and untoward deprivation of the historic right and obligation of the States to maintain peace and order within their confines . . . . A State's interest in vindicating its sovereign authority through enforcement of its laws by definition can never be satisfied by another State's enforcement of its own laws." *Id*. at 93.

Tennessee has long recognized the doctrine of dual sovereignty of the states. In *Lavon v. State*, 586 S.W.2d 112 (Tenn. 1979), the Tennessee Supreme Court recognized that state and federal governments were distinct sovereignties and therefore the punishment of a single offense by both was not a violation of double jeopardy protections. *See id*. at 113-114. Shortly thereafter, the Tennessee Court of Criminal Appeals, citing *Lavon*, affirmed the judgment of the trial court for a defendant who was first convicted in Massachusetts and subsequently tried in Tennessee. *See State v. Straw*, 626 S.W.2d 286 (Tenn. Crim. App. 1981). In *State v. Wyche*, 914 S.W.2d 558 (Tenn. Crim. App. 1995), this court concluded:

> The longstanding principle of dual sovereignty contemplates that a conviction for the same identical offense by a court of another sovereign does not constitute double jeopardy. Tennessee courts have traditionally followed this rule, holding that successive prosecutions by different states for the same conduct do not offend the double jeopardy clause of the United States or Tennessee Constitutions. Thus, in violating the laws of two sovereigns, the Defendant can be successively prosecuted under the laws of both without subjecting him to double jeopardy.

*Id*. at 561 (citations omitted); *see also State v. Chitwood*, 735 S.W.2d 471, 472-73 (Tenn. Crim. App. 1987).

In his appellate brief, the defendant attempts to group the state prosecution in Pennsylvania with the state prosecution in Tennessee, and argues that "the prosecution" changed its theory as to the location of the homicide with the change in the location of the trial. The defendant's argument however, mischaracterizes the record and is misplaced. Applying the law to the facts of the case, it is apparent that the defendant violated the laws of two sovereigns whereupon he abused a corpse and tampered with physical evidence in Pennsylvania and committed murder in Tennessee. Throughout the defendant's trial in Tennessee, the state prosecutor maintained that the defendant murdered the victim at a rest stop in Bristol, Tennessee. The doctrine of dual sovereignty applies, and therefore, double jeopardy is not an issue. We also point out a critical flaw in the defendant's double jeopardy argument, namely that he was convicted in Pennsylvania for the offenses that took place in Pennsylvania, and that he was convicted in Tennessee for offenses that took place in Tennessee. Logically, there is no basis for argument that the defendant was convicted of the same offense twice. The jury in Pennsylvania found that he abused a corpse and tampered with physical evidence in Pennsylvania after he committed murder in Tennessee. As such, the Pennsylvania jury specifically determined that Pennslyvania lacked territorial jurisdiction to convict the defendant of murder. Thereafter, the jury in Tennessee found that the defendant committed the murder in Tennessee. For this reason, even if we agreed that the relevant authority on the dual sovereignty doctrine was limited in the way the defendant suggests, which we do not, double jeopardy would not

bar this prosecution because the dual sovereignty doctrine is not even implicated by the facts of the case.

The defendant's attack on the Tennessee's jurisdictional nexus, is equally unavailing. It is well-settled in Tennessee that a court must have territorial jurisdiction over a criminal defendant to exercise its jurisdiction, or power, over that defendant. *State v. Legg*, 9 S.W.3d 111, 114 (Tenn. 1999). Both the United States and Tennessee Constitutions embody the concept that a state possesses the power to punish criminal conduct occurring within its borders. U.S. Const. art. III, § 2 ("The trial of all crimes . . . . shall be held in the state where the said crimes shall have been committed."); U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed."); Tenn. Const. art. I, § 9 ("That in all criminal prosecutions, the accused hath the right to . . . . a speedy and public trial, by an impartial jury of the county in which the crime shall have been committed."). *See also State v. Audra Lynn Johnson*, No. M2005-02855-CCA-R3-CD, 2006 WL 3498046 at *4 (Tenn. Crim. App., at Nashville, Nov. 21, 2006). In addition, the authority for Tennessee's territorial jurisdiction derives from Tennessee Code Annotated section 39-11-103(b)(1), which states, "[w]hen an offense is commenced outside of this state and consummated in this state, the person committing the offense is liable for punishment in this state in the county in which the offense was consummated, unless otherwise provided by statute."

In *State v. Legg*, the Tennessee Supreme Court analyzed Tennessee Code Annotated section 39-11-103 and determined that a crime is consummated, "when the last element necessary for commission of the crime is satisfied." *State v. Legg*, 9 S.W.3d 111, 115 (Tenn. 1999). In *State v. Audra Lynn Johnson*, this court announced that "the last element of a homicide offense occurs upon the death of the victim." No. M2005-02855-CCA-R3-CD, 2006 WL 3498046 at *4 (Tenn. Crim. App., at Nashville, Nov. 21, 2006) (citing *Legg*, 9 S.W.3d at 115). In *State v. Beall*, 729 S.W.2d 270 (Tenn. Crim. App. 1986), this court held that territorial jurisdiction is a fact which must be proven beyond a reasonable doubt. *Id*. at 271. This court also held that the question of whether a murder was committed in this state or another state is "a factual matter to be resolved by the jury after hearing all the testimony of the witnesses, weighing their credibility, and applying to the facts the law as given them by the trial judge." *Id*.

In the instant case, the jury in Tennessee was instructed that the state had to prove beyond a reasonable doubt that the charged offenses occurred in Tennessee. Ultimately, the jury returned a verdict of guilt on the defendant's murder charges. By its verdict, the jury found that the state met its burden of proof with regard to the issue of territorial jurisdiction. Accordingly, the defendant's argument is without merit.

**B. Motion To Suppress**

The defendant next argues that the trial court erred by denying his motion to suppress his statements to Pennsylvania state police officers. Specifically, the defendant argues that oral and written statements to police were made when he was "in custody" and without *Miranda* warnings.

In reviewing a trial court's determinations regarding a suppression hearing, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). Thus, "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." *Id*. Nevertheless, appellate courts will review the trial court's application of law to the facts purely de novo. *See State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001). Furthermore, the state, as the prevailing party, is "entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." *Odom*, 928 S.W.2d at 23. Moreover, we note that "in evaluating the correctness of a trial court's ruling on a pretrial motion to suppress, appellate courts may consider the proof adduced both at the suppression hearing and at trial." *State v. Henning*, 975 S.W.2d 290, 299 (Tenn. 1998).

In *Miranda v. Arizona*, the United States Supreme Court held that statements made during the course of a custodial police interrogation are inadmissible at trial unless the state establishes that the defendant was advised of his right to remain silent and his right to counsel and that the defendant then waived those rights. *See Miranda v. Arizona*, 384 U.S. 436, 471-75 (1966); *see also Dickerson v. United States*, 530 U.S. 428 (2000); *Stansbury v. California*, 511 U.S. 318, 322 (1994). However, the Court limited its holding to a "custodial interrogation." *Miranda*, 384 U.S. at 478-479. "Custodial interrogation" was defined by the Court as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* at 444. A person is "in custody" within the meaning of *Miranda* if there has been "a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *California v. Beheler,* 463 U.S. 1121, 1125 (1983) (internal citations omitted); *see also Yarbrough v. Alvarado*, 541 U.S. 652, 653 (2004). The Court has refused to extend the holding in *Miranda* to non-custodial interrogations. *See Oregon v. Mathiason*, 429 U.S. 492 (1977) (holding that an accused's confession was admissible because there was no indication that the questioning took place in a context where his freedom to depart was restricted in any way). *Miranda* has been held not to apply "outside the context of inherently coercive custodial interrogations for which it was designed." *Roberts v. United States*, 445 U.S. 552 (1980). Moreover, the Tennessee Supreme Court has refused to accept the notion that a person is "in custody" merely because the person was a suspect when interviewed by law enforcement officials. *Beckwith v. United States*, 425 U.S. 341 (1976).

The Tennessee Supreme Court has identified several factors relevant to a determination of whether or not a suspect or defendant has been subjected to a custodial interrogation:

> Some factors relevant to that objective assessment include the time and location of the interrogation; the duration and character of the questioning; the officer's tone of voice and general demeanor; the suspect's method of transportation to the place of questioning; the number of police officers present; any limitation on movement or other form of restraint imposed on the suspect during the interrogation; any

> interactions between the officer and the suspect, including the words spoken by the officer to the suspect, and the suspect's verbal or nonverbal responses; the extent to which the suspect is confronted with the law enforcement officer's suspicions of guilt or evidence of guilt; and finally, the extent to which the suspect is made aware that he or she is free to refrain from answering questions or to end the interview at will.

*Anderson*, 937 S.W.2d 851, 855 (Tenn. 1996). The test of whether an individual was in custody within the meaning of *Miranda* and its progeny is "objective from the viewpoint of the suspect, and the unarticulated, subjective view of law enforcement officials that the individual being questioned is or is not a suspect does not bear upon the question." *Id*.

At the suppression hearing prior to trial, Trooper Krause was called as a witness regarding the procedures used to interview the defendant. Trooper Krause testified that he and Sergeant Rain went to the defendant's home in an unmarked police car and asked if they could speak with him regarding questions that had arisen as a result of his interview with Corporal Morelli. The defendant willingly agreed to accompany the officers to the police barracks. He was informed that he was not under arrest or in custody. The defendant was not subjected to a search or frisk. Trooper Krause stated that the defendant was reminded that he was not under arrest and was free to leave at any time, and the defendant was given a non-custodial waiver form to sign. The defendant signed the form and the investigators began the interview.

Trooper Krause testified that the defendant was allowed to take smoke breaks and stand in the opening of an exterior door to the police barracks building during those breaks. Trooper Krause stated that the defendant had the option to leave at any time if he so desired. In addition, the interview was recorded and the tape recorder was placed in the middle of the table in the room. The defendant was asked about this, and consented to the use of the tape recorder. According to Trooper Krause, the defendant never asked to terminate the interview or attempted to leave. At one point, late in the interview, the defendant asked to smoke and Trooper Krause told him, "You can in a minute. Can you let me finish what I'm going to say?" The defendant made a second request for a cigarette, and was asked again to wait another minute. After the second request, the defendant stated that if he could have a cigarette or two, he would tell investigators the story. Sergeant Rain got a styrofoam cup for the defendant to use as an ash tray and the defendant was allowed to smoke in the interview room as the interview continued. Trooper Krause also stated that after each break, he would remind the defendant that he was not under arrest and was free to leave at any time.

Trooper Krause testified that after the interview had proceeded for some time, he and Sergeant Rain excused themselves and went to call a prosecutor to see if they had sufficient evidence to arrest the defendant. After their consultation, they decided that the defendant would be advised of his *Miranda* warnings and placed into custody. The defendant asked to speak to an attorney at that time and the interview was terminated.

On cross-examination, Trooper Krause acknowledged that a patrol car was asked to remain in the area as a precaution while he Sergeant Rain went to speak to the defendant at his home. He

also admitted that in the early stages of the interview, the defendant was unaware that the officers knew the victim's body had been found in the Susquehanna River. Trooper Krause stated that the defendant was taken to the police barracks because they wanted to interview him without any outside influence. He also stated that the interview lasted a total of four hours and forty-five minutes. At the conclusion of the hearing, the trial court found that the defendant was not in custody at the time he made statements to Trooper Krause and Sergeant Rain. The defendant's motion to suppress was denied and Trooper Krause was permitted to testify at trial regarding his interview with the defendant.

The defendant relies upon the authority of *State v. Payne*, 149 S.W.3d 20 (Tenn. 2004) to support his argument that he was "in custody" at the time he made statements to police officers. In *Payne*, the defendant voluntarily appeared for an interview which took place over three separate phases and lasted a total of one to two hours. *See id*. at 33-34. The Tennessee Supreme Court placed great emphasis on the fact that the defendant was only informed once at the beginning of the interview that he was free to leave and no other reminders of that freedom were provided to the defendant during the remainder of the interview. *Id*. at 34. The court also focused upon the fact that the defendant was expressly denied the opportunity to call his sister. *Id*.

By contrast, the state argues that the facts of the present case are more similar to those of *State v. Munn*, 56 S.W.3d 486 (Tenn. 2001). In *Munn*, our supreme court determined that the defendant was not in custody and therefore did not require *Miranda* warnings. The defendant went to the police station voluntarily where he was interviewed both alone and with at least one of his parents. *See id*. at 499. The investigating officers maintained a polite and courteous demeanor toward the suspect, even though their questioning was at times accusatory. *Id*. The suspect in *Munn* was reminded several times that he was not under arrest and was free to leave at any time. *Id*.

Upon review of the record, we determine that the facts of the instant case are less similar to the facts of *Payne* and more similar to the facts of *Munn*. According to the testimony of the interviewing officers at the suppression hearing, the defendant was transported to the police station by officers in an unmarked car and was not subject to a frisk or search. The defendant was advised of his rights and executed a written waiver of those rights. The non-custodial waiver form informed the defendant that the interview that he was participating in was a voluntary, non-custodial interview and that he was free to leave at any time. According to Trooper Krause, the defendant was reminded multiple times that he was not under arrest and that he was free to leave at any time. He was also informed that his interview would be recorded. The cassette recorder used was placed on the table in front of the defendant in plain view. The defendant was permitted to take several smoke breaks during the interview. A reasonable person would not equate the opportunity to take smoke breaks near an exterior door, open to the outside to a custodial arrest. In addition, the officers afforded the defendant an opportunity to smoke in the interview room, a bargain suggested and entered into by the defendant who stated, "[l]et me have a cigarette or two, and I'll tell you the story."

After the defendant was shown photographs of the victim's body, he agreed to tell officers the entire story. As soon as the officers believed they had probable cause to arrest the defendant they

excused themselves, contacted a prosecuting attorney for advice, returned to the defendant, and advised the defendant of his *Miranda* rights. Once the defendant was apprised of his *Miranda* rights, he was informed that he would be placed under arrest. At that time, the defendant invoked his right to an attorney and the police officers ceased all questioning. The record reflects that at all times, the investigating officers maintained a courteous and polite demeanor toward the defendant. It does not appear that the defendant attempted to leave at any point, despite having ample opportunity to do so, nor does it appear that officers communicated to the defendant that he was unable to leave.

Accordingly, based on our review of the facts in this case, we conclude that the statements made by the defendant to police were made in a non-custodial context. Therefore, the trial court did not err in denying the defendant's motion to suppress. The issue is without merit.

### C. Special Jury Instruction

The defendant next argues that the trial court abused its discretion when it denied his request for a special jury instruction that the jury must presume that the killing of the victim occurred in the state in which the victim's body was discovered.

In criminal cases, a defendant has the right to a correct and complete charge of the law. *State v. Garrison*, 40 S.W.3d 426, 432 (Tenn. 2000); see Tenn. R. Crim. P. 30. A jury instruction, however, must be reviewed in its entirety and read as a whole rather than in isolation. *State v. Leach*, 148 S.W.3d 42, 58 (Tenn. 2004). "An instruction should be considered prejudicially erroneous only if the jury charge, when read as a whole, fails to fairly submit the legal issues or misleads the jury as to the applicable law." *State v. Faulkner*, 154 S.W.3d 48, 58 (Tenn. 2005) (citing *State v. Vann*, 976 S.W.2d 93, 101 (Tenn. 1998)). The failure to properly charge the jury deprives the defendant of the constitutional right to a jury trial and subjects the erroneous jury instruction to harmless error analysis. *Garrison*, 40 S.W.3d at 433-34. However, we note that "Tennessee law does not mandate that any particular jury instructions be given so long as the trial court gives a complete charge on the applicable law." *State v. Armstrong*, No. M2006-01522-CCA-R3-CD, 2008 WL 203582 at *7 (Tenn. Crim. App., at Nashville, Jan. 24, 2008) (citing *State v. West*, 844 S.W.2d 144, 151 (Tenn. 1992)).

The defendant relies upon *State v. Beall*, 729 S.W.2d 270, 271 (Tenn. Crim. App. 1986) and asserts that the trial court erred by not providing a special instruction to the jury permitting jurors to presume that the killing of the victim occurred in the state in which the body was discovered. The presumption recognized in *Beall* has its foundation in a preceding case, *Reynolds v. State*, 287 S.W.2d 15 (Tenn. 1956). In *Reynolds*, the court held that the finding of a body in the county of trial created a presumption that the killing occurred in that county, and therefore a jury could find venue in the county. *Id*. However, in *Beall*, the court was careful to distinguish between venue and territorial jurisdiction. The court explained:

> Although the question raised in this matter is not one of venue in a particular county but one of territorial jurisdiction in Tennessee, we see no reason to hold that the

> finding of the body in Montgomery County, Tennessee, would not give rise to a presumption that the killing occurred in this state . . . On the matter of territorial jurisdiction, the standard of proof is beyond a reasonable doubt, in contrast to a preponderance of the evidence on issues of venue, i.e., state to state as distinguished from county to county.

*Beall*, 729 S.W.2d at 271. In *Beall*, the issue was raised as to whether the victim had been killed in Kentucky or Tennessee, and therefore, whether Tennessee had the territorial jurisdiction to consider the case. *Id*.

Upon review of the record, it appears from the defendant's own statements to Pennsylvania police officers that the victim's death occurred at a rest stop in Tennessee. In addition, the jury in the Pennsylvania trial concluded that Pennsylvania did not have the territorial jurisdiction to consider the murder charges against the defendant because they did not find that the killing had been committed in that state. Therefore, we conclude that the trial court did not err by refusing to issue the requested instruction. *See Armstrong,* 2008 WL 203582 at *7. The Tennessee trial court properly instructed the jury about the burden of proof for territorial jurisdiction. Additionally, if any error occurred as a result of the failure to issue the jury instruction, such error was harmless because it did not impact the jury's verdict. *See Garrison*, 40 S.W.3d at 433-434. Therefore the defendant is without relief as to this issue.

**D. Sufficiency**

As his final issue, the defendant argues that there was insufficient evidence to sustain his conviction for first degree murder. Specifically, the defendant contends that the "corpus delicti" or evidence that the victim was killed in Tennessee, was not proven beyond a reasonable doubt as required.

Upon review, we reiterate the well-established rule that once a jury finds a defendant guilty, his or her presumption of innocence is removed and replaced with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). Therefore, on appeal, the convicted defendant has the burden of demonstrating to the appellate court why the evidence will not support the jury's verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). To meet this burden, the defendant must establish that no "rational trier of fact" could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Evans*, 108 S.W.3d 231, 236 (Tenn. 2003); *see* Tenn. R. App. P. 13(e). By contrast, the jury's verdict, approved by the trial judge, accredits the state's witnesses and resolves all conflicts in favor of the state. *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). The state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn from that evidence. *Carruthers*, 35 S.W.3d at 558. Questions concerning the credibility of the witnesses, conflicts in trial testimony, the weight and value given to the evidence, and all factual issues raised by the evidence are resolved by the trier of fact and not this court. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). We do not attempt to re-weigh or re-evaluate the

evidence. *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006). Likewise, we do not replace the jury's inferences drawn from the circumstantial evidence with our own inferences. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002).

"The corpus delicti of a crime requires a showing that a certain result has been produced and the result was created through a criminal agency." *State v. Jones,* 15 S.W.3d 880, 890-891 (Tenn. Crim. App. 1999). "Whether the state has sufficiently established the corpus delicti is primarily a jury question." *Id*. at 891 (citing *Williams v. State*, 552 S.W.2d 772 (Tenn. Crim. App. 1977)). While evidence of the corpus delicti may not be established by the defendant's confession alone, only minimal or slight evidence is needed to corroborate a defendant's confession and sustain a conviction on appeal. *See State v. Buck*, 670 S.W.2d 600, 609 (Tenn. 1984). The corpus delicti of the crime may be established by circumstantial evidence. *See Clancy v. State*, 521 S.W.2d 780, 783 (Tenn. 1975). Direct or circumstantial evidence may therefore corroborate a defendant's confession. *See State v. Ellis*, 89 S.W.3d 584, 600 (Tenn. Crim. App. 2000).

When viewed in a light most favorable to the state, the evidence established that the victim's body was recovered from the Susquehanna River. The evidence also established that the victim was killed due to repeated blows to the head with a blunt object. The victim sustained multiple head lacerations and skull fractures. The evidence also established that defendant was the last person seen with the deceased victim. The defendant, in statements to police, while refusing to admit that he killed the victim, admitted that the victim's death "took place through the night" at a rest stop in Tennessee, and that the defendant drove Tuesday morning from the rest stop with the victim's body on the couch of his motor home. He admitted traveling with the body for approximately two days, wrapping the body, placing it in the blue trash container in which it was found, and dumping the body into the river at night. The victim's body was discovered in the Susquehanna River in a plastic trash container downstream from where the defendant indicated he had dropped it. The defendant also admitted to burning his motor home at the Virginia rest stop because he believed he "was gonna get blamed." In addition, the last call made from the victim's cell phone was made at 9:33 p.m. on Monday, April 21, 2003, and was routed through the Knoxville, Tennessee switch. The time of this phone call corresponds with the approximate time of the victim's final phone call to his girlfriend, Tracy Sincavage. While not conclusive in its own right, we agree with the state that this fact is generally consistent with the account of events provided by the defendant to police officers.

We conclude that the cumulative nature of the circumstantial and direct evidence in this case is sufficient to corroborate the statements made by the defendant and sustain his convictions for first degree murder. This issue is without merit.

## CONCLUSION

Based upon the foregoing authorities and reasoning, we affirm the judgments of the trial court.

_____

J.C. McLIN, JUDGE